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No.

IN THE

SUPREME COURT OF THE UNITED STATES

In re:

GEORGE LAWSON KELLY

ON PETITION FOR AN EXTRAORDINARY WRIT OF PROHIBITION
FROM THE UNITED STATES DISTRICT COURT,
MIDDLE DISTRICT OF FLORIDA, TAMPA DIVISION

PETITION FOR A WRIT OF PROHIBITION

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228

QUESTIONS PRESENTED

1) Can a Court, which is the only Court that can offer the relief sought by Plaintiff, willfully and deliberately refuse to provide for a Hearing in the matter?

2) Can a Judge who is in evident violation of the provisions of 28 USC 455, preside over a case, issue orders, and have those orders stand?

3) Can a Justice or Justices of a state Supreme Court allow a Federal Judge to preside over a case where the Justices themselves are Defendants and the Justices knew, or should have known, that the Judge in the case is in evident violation of 28 USC 455?

4) Can an Order of the Court stand when the Order itself is a wrongful edict set to advantage one party in a dispute over the other party in evident disregard of the facts?

LIST OF RESPONDENTS

1. Chief Justice Charles T. Wells, Florida Supreme Court
2. Justice Major B. Harding, Florida Supreme Court
3. Justice Leander J. Shaw, Jr., Florida Supreme Court
4. Justice Harry Lee Anstead, Florida Supreme Court
5. Justice Barbara J. Pariente, Florida Supreme Court
6. Justice R. Fred Lewis, Florida Supreme Court
7. Justice Peggy A. Quince, Florida Supreme Court
8. Clerk Thomas D. Hall, Florida Supreme Court
9. Acting Clerk Debbie Causseaux, Florida Supreme Court
10. Florida Department of Transportation
11. Thomas F. Barry, Secretary Florida Department of Transportaion,
12. Kenneth A. Hartman, District 7 Secretary
13. City of Clearwater,
14. Brian Aungst, Mayor of Clearwater,
15. Ed Hart, Commissioner City of Clearwater
16. Ed Hooper, Commissioner City of Clearwater
17. Bob Clark, Commissioner City of Clearwater
18. J.B. Johnson, Commissioner City of Clearwater
19. Michael J. Roberto, former City Manager
20. Pamela Akin, City Attorney
21. Charlie Siemon, Development Consultant to the City of Clearwater.

TABLE OF CONTENTS

Questions Presented i
List Of Respondents ii
Opinions Below 1
Jurisdiction 3
Statement Of The Case 3
Argument 9
Relief Sought 17
Conclusion 17

In The

Supreme Court Of The United States

In re George Lawson Kelly

PETITION FOR WRIT OF PROHIBITION

COMES NOW GEORGE LAWSON KELLY, Plaintiff/ Petitioner pro se, to file suit against aforementioned Respondents and says:

1. That this is an extraordinary action for a Writ of Prohibition.

2. That Petitioner is a resident, homeowner and taxpayer of the City of Clearwater, County of Pinellas, State of Florida.

OPINIONS BELOW

1) Order Transferring Petition -4 April, 2000

2) Order Granting in Part Movants' Motions to Dismiss Plaintiff's Amended Complaint; Order Denying as Moot Movants' Alterative Motions for Summary Judgment -22 August, 2001

3) Order sighting deficiencies of Plaintiff's Response to Reply

-24 August, 2001

4) Order Granting in Part Motion to Dismiss Plaintiff's Amended Complaint; Dismissing Plaintiff's claims against Defendant's; Denying as Moot Alternative Motion for Summary Judgment

-15 October, 2001

5) Order Dismissing case for Failure to Show Cause

-31 October, 2001

6) Order Granting Defendants' Motion to Dismiss Plaintiff's Amended Complaint; Denying Plaintiff's Motion for Leave to Amend

-2 November, 2001

7) Ordering Plaintiff to Show Cause regarding Defendant Charles Siemon

-6 November, 2001

8) Order Dismissing Case for Failure to Show Cause

-27 November, 2001

JURISDICTION

3. That this Court has jurisdiction in the matter pursuant to Article III §1 of the Constitution of the United States, 28 USC 455, 28 USC 1257 and 28 USC 1651.

4. That exceptional circumstances warrant the exercise of this Court's discretionary powers and that adequate relief cannot be obtained in any other form or from any other court.

STATEMENT OF THE CASE

5. That on or about the 5th day of November, 1998 the City of Clearwater did receive and did take possession of certain roadways at the entrance to Clearwater Beach from the State of Florida where such roadways previously constituted the beginning of State Road 60 a principle east/west artery and the commencement point of a Major Hurricane Evacuation Route see Doc. 1, pg A3.

6. That the City of Clearwater did then proceed to create and have constructed on the aforementioned roadways a singular traffic roundabout set to serve as a replacement for the previous intersections which were configured as in Exhibit A, pg. A1.

7. That the roundabout created and constructed by the City was merely one of a number of changes

undertaken all of which were primarily intended to beautify the entrance to Clearwater Beach where beautification and entertainment were to be the primary focus and the element of traffic mobility was viewed as a secondary concern with the roundabout set to surround the first of two massive fountains to be configured as in Exhibit B, pg. A2.

8. That prior to construction of the roundabout a Clearwater resident (Susan Boschen) did file suit to enforce a provision of the City's Charter requiring an approved referendum prior to the issuing of municipal bonds for all expenditures of monies in excess of 1-million dollars.

9. That the City of Clearwater did seek, and was granted, permission to bypass the referendum requirement citing overriding concerns of "Public Health and Safety" whereby the City stated and subsequently argued that the intersections to be replaced by the singular roundabout configuration were inherently unsafe with what the City claimed was an exaggerated accident count.

10. That the Petitioner (Susan Boschen) did bring the matter forward to the Florida Supreme Court on appeal and the Florida Supreme Court ruled against the appeal stating:

> "The wisdom or desirability of a bond issue is not a matter for our consideration."
> "Roundabouts typically reduce the number of accidents that occur by 60 to 70 percent."

> "We are charged only with judging the legality of the undertaking, though conceivably a project might be as ill-advised as it is legal." See Exhibit D, pg. A20.

11. That the operation of the completed roundabout did quickly evidence a dramatic increase in the number of accidents reported where such an increase has continued over time and as the January 19, 2002 edition of *The Wall Street Journal*, see Exhibit E, pg. A60, reported in it's front page story on the Clearwater Roundabout:

> "The frequency of accidents is eight times higher at the roundabout than at the intersections it replaced."

12. That the Petitioner, George Lawson Kelly, did file suit in the Florida Supreme Court by means of a **PETITION FOR WRIT OF MANDAMUS**, see Doc. 2, pg. A6 whereby Petitioner sought to have the Court compel the Secretary of the Florida Department of Transportation retake the affected roadways and redesign and reconfigure the said roadways to provide for safe passage on what is a mandated Major Hurricane Evacuation Route.

13. That the Supreme Court of the State of Florida did respond to the Plaintiff's clearly expressed PETITION FOR A WRIT OF MANDAMUS by means of an **ORDER**

TRANSFERRING PETITION, see Doc. 4, pg. A12 wherein it is stated:

> "Petitioner has submitted a Petition for Writ of Mandamus in this Court. It appears to the Court that the claims raised in the instant petition are more appropriately addressed in an action seeking declaratory relief under Chapter 86, Florida Statutes."

14. That Plaintiff/Petitioner did respond to the ORDER TRANSFERRING PETITION by categorically rejecting the ORDER citing once again the fact that:

> "The first responsibility of the (Florida) Secretary of
> Transportation is to provide for safe passage on the roadways which constitute the State road system and never more so than when these roadways are expected to be used as an Emergency Hurricane Evacuation Route."

15. That the Court responded to Plaintiff's **RESPONSE TO ORDER TRANSFERRING PETITION,** see Doc. 5, pg A13, and stated that Plaintiff's response would be treated as a **REQUEST FOR A REHEARING.**

16. That the above mentioned REQUEST FOR A REHEARING was subsequently denied.

17. That prior to the Court's denial of a REHEARING Plaintiff/Petitioner did submit to the

individually named Justices of the Florida Supreme Court a **PETITION FOR REVIEW**, see Doc. 6, pg. A15, seeking to have the individually named Justices address the issues raised by the Plaintiff/Petitioner stating that:

> "The ORDER TRANSFERRING PETITION issued under the hand of the Acting Clerk of the Supreme Court was a deliberate and specific attempt to thwart the progress of Plaintiff's PETITION FOR PEREMPTORY WRIT OF MANDAMUS by redirecting it to the Sixth Judicial Circuit, in and for Pinellas County, on the patently false assumption that Plaintiff was somehow seeking declaratory relief which would fall as a matter of course under Chapter 86, Florida Statutes.
>
> This patently false assumption that Plaintiff was somehow seeking declaratory relief is itself an outrageous act of Obstruction of Justice. Even a first year law student would know the difference between an effort to secure a Declaratory Judgment and a Writ of Mandamus. The first is about rights and the second is about responsibilities - FAILED responsibilities and never more so than is the case presented in Plaintiff's PETITION FOR PEREMPTORY WRIT OF MANDAMUS."

18. That the PETITION FOR REVIEW was never acknowledged or answered.

19. That the Plaintiff / Petitioner did conclude that the actions of the Clerk, the Acting Clerk , the individually named members of the Florida Supreme Court, and the whole of the Court did substantially and significantly impact the Petitioner's rights to due process and equal protection and did give rise to a suit in Federal Court to correct and address same.

20. That as expected the named Defendants did file the requisite Motions to Dismiss, see Documents 8, 9, 10, and 11, pgs. A23-A33, and that Plaintiff did address each and every point made by the Defendants.

21. That in the final written remarks made by the trial judge the wholly unwarranted position was taken (by the trial judge) that, everything else aside, Plaintiff/Petitioner lacked standing to pursue any action whether as to the roundabout or Plaintiff's perceived infringement of Plaintiff's rights stating:

> "Plaintiff's allegations that the actions of the Secretary of the Department of Transportation and the Florida Supreme Court have placed the City of Clearwater and taxpayers "at risk" are, at best, hypothetical and conjectural. Such vague

allegations are not sufficient to demonstrate a real and immediate threat of injury, and as such, fail to meet the threshold requirements of Article III."

ARGUMENT

This is a simple case.

It began with the Petitioner's efforts to have the Florida Supreme Court compel the Secretary of the Florida Department of Transportation retake a portion of State Road 60 from the City of Clearwater where the State had previously deeded that portion of State Road 60 to the City of Clearwater so that the City could create and construct a roundabout intersection.

Upon completion of the construction phase it became immediately apparent by the sheer volume of accidents that the roundabout was, to be charitable, not living up to expectations.

Instead of a "60-70% reduction" in accidents there was better than an eightfold increase.

Articles locally, nationally and internationally heralded the dysfunctional properties of the roundabout under headlines boldly proclaiming,

"TRAGIC ROUNDABOUT" - London Daily Mirror, Tuesday August 29, 2000, see Exhibit C, pg. A18

Under the terms of the transfer agreement between the City and the State, the City had to maintain the roundabout intersection to a certain level of mobility.

In the event of an accident the mobility level can, and has innumerable times, dropped to zero.

Lacking the bypass provisions of the old multiple intersection layout gridlock is a common occurrence.

If the Clearwater Beach roundabout was located almost anywhere else the exaggerated accident count, while not acceptable, might be tolerable; but, located where it is, at the epicenter of a Major Hurricane Evacuation Route, it poses a real clear and present danger to thousands of beach guests and residents.

In a hurricane evacuation situation even a minor accident could easily compromise the roundabout such that vehicular movement off the beach could be precluded with the very real prospects of death and injury all but certain.

This is not conjecture. This is a very real probability and such gridlock has occurred innumerable times already.

On this basis Plaintiff/Petitioner George Lawson Kelly brought suit by means of a PETITION FOR WRIT OF MANDAMUS to compel the Secretary of the Florida Department of Transportation to retake

the affected roadways and reconfigure them to provide for "safe passage."

The Florida Supreme Court having recently heard the matter as to the bond issue for the roundabout's construction, and having themselves previously declared that roundabouts were "60 to 70 percent" safer than traditional intersections, were now being asked, in effect, to reconsider, if not revoke, their prior decision and determine that this particular intersection was, by accident count alone, a hazard laden with evident risk.

The Florida Supreme Court was not prepared to address same.

Plaintiff/Petitioner's PETITION FOR WRIT OF MANDAMUS to the Florida Supreme Court speaks for itself and is attached and included herein, see Doc. 2, pg. A6.

The Florida Supreme Court's ORDER TRANSFERRING PETITION speaks for itself and is also attached and included herein, see Doc. 4, pg. A12.

It has been and continues to be the singular contention of the Plaintiff/Petitioner that the ORDER TRANSFERRING PETITION was a corrupt edict deliberately set to cast aside Plaintiff's legitimate efforts to be removed from a condition of evident risk where such risk was to be found in

the operation of a clearly dysfunctional intersection.

The Clearwater Beach roundabout is, by any reasonable reckoning, a disaster waiting to happen.

The roundabout's fundamental design failings of too small a circumference, combined with too many points of entrance and exit, while allowing for the inside lane to cross over the outside lane to effect an exit, is, clearly, not a workable model.

A singular accident or drowning or heart attack, not necessarily having anything immediately to do with the roundabout, could see the City and it's taxpayers liable for damages in a suit for "wrongful death or injury;" where such suit was predicated on inordinate delays related to, or associated with, the roundabouts inability to move the necessary and expected volumes of traffic.

As indicated in the recent *Wall Street Journal* article, 18 January 2002, see Exhibit E, pg. A60, the intersection was designed to move at best 32,000 vehicles per day where a busy day can and does see traffic counts exceeding 50,000.

Indeed, when one factors in the impact of pedestrian traffic in what is a pedestrian rich environment the roundabout clearly fails to meet the MINIMUM requirements of mobility as called for in the Transfer Document deeding the affected roadway to the City from the State, see Doc. 1, pg. A3.

The stated "cure" for *any* deficiencies as to mobility is clearly presented in the Transfer Document where it states:

> "In the event that the City does not comply with (f) [the mobility requirements expressed as an operating level of service "D"], the roadway will revert back to the Department."

This "reversion" has been and continues to be the goal, aim and intention of Plaintiff/Petitioner's efforts.

When Plaintiff/Petitioner's efforts were effectively "dead-ended" by the Florida Supreme Court, Plaintiff/Petitioner next sought relief in the Untied States District Court for the Middle District of Florida, Tampa Division.

Plaintiff/Petitioner did file a Complaint in the aforementioned Court and the members of the Florida Supreme Court, it's Clerk and Acting Clerk, did, through the office of the Florida Attorney General, file the expected Motion to Dismiss.

Plaintiff/Petitioner did address each and every point made by counsel for the named Defendants and Plaintiff/Petitioner was clearly dumbfounded when the federal court judge did grant Defendant's Motion.

Plaintiff/Petitioner was not prepared for the evident bias exhibited in the Order of Dismissal,

see Doc. 11, pg. A33 and Doc. 13, pg. A44, issued by the federal court judge and Plaintiff/Petitioner did immediately seek to gain an understanding of the federal court judge's motivation for issuing, what, to the Plaintiff/Petitioner, clearly was a wrongful edict.

Plaintiff/Petitioner immediately became aware of the provision of law referred to as 28 USC 455 where it is stated that:

> "Any justice, judge or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

Far from being in a position of "impartiality" the federal court judge had, in the one instance, for a two year period sat on The Bias/Fairness Commission of the Florida Supreme Court with a now Justice of the Florida Supreme Court.

Additionally, as a member of the Board of Overseers of Stetson College of Law, the federal court judge would have been in all probability a principle in giving yet another Justice of the Florida Supreme Court an Honorary Doctorate of Law degree.

Plaintiff/Petitioner was specifically asking the federal court judge to make a determination that the actions of the Florida Supreme Court, it's Members, Clerk and Acting Clerk did willfully and

deliberately obstruct justice in the matter of *George Lawson Kelly vs. Chief Justice Charles T. Wells et. al* where such a determination of itself would have seen these Defendants in violation of the "good conduct" clause as presented in Article III § 1 of the Constitution of the United States.

The relationships of the federal court judge to at least two of the Members of the Florida Supreme Court was not one of incidental contact but one of a prior professional relationship which clearly on the one hand extended over a period of at least two years.

Both the federal court judge and the two Supreme Court Justices had an absolute duty and obligation under the Law to seek recusal.

Such recusal was not sought nor was it forthcoming.

The concluding remarks of the federal court judge that:

> "Plaintiff has failed to satisfy the threshold requirements of Article III of the Untied States Constitution that parties seeking 'to invoke the power of the federal courts must allege an actual case or controversy'"

is, as any polite Englishman might say, balderdash.

It is the specific contention of the Plaintiff/Petitioner that the actions of the federal

court judge were willful and deliberate in granting the Motions to Dismiss to preclude Plaintiff/Petitioner' efforts at any avenue of appeal and that these Motions should never have been granted by a judge who should have never heard the matter.

The Clearwater beach roundabout stands as a hazard which represents the physical manifestation of an ongoing risk and if there were any doubts about this fact a Show Cause Hearing would have resolved same.

This ongoing and continuing risk is a threat that is both real and immediately evident and this threat grants to the Plaintiff/Petitioner standing to bring suit to be relieved of same.

All the artful and carefully crafted language to the contrary by the Defendants, the actions of the Defendants/Respondents and the federal court judge speak volumes.

Res Ipsa Loquitur

The Facts Speak for Themselves.

A hazard still stands.

A danger still exists.

An injustice has been done.

To use the Law to abuse the law is the most egregious and obnoxious of crimes.

Indeed, there could be no greater crime, no greater injustice, than that served up by members

of a Judiciary out to protect their own at the expense of another not so similarly situated.

This is a simple case.

There are no mistakes here.

There is no inadvertent error.

There is no simple misunderstanding.

There are, indeed, willful and deliberate acts and Plaintiff/Petitioner sues to be relieved of same.

RELIEF SOUGHT

This Court has wide latitude and broad discretion in addressing any matter brought before it whose resolution will aid in the administration of Justice.

Plaintiff/Petitioner recognizes that a PETITION FOR A WRIT OF PROHIBITION may or may not be the appropriate vehicle to bring this matter forward but if one accepts that the first duty of a Jurist is to preserve and uphold the integrity of the Court, then this case, and it's disposition, is of the first order.

CONCLUSION

Plaintiff/Petitioner specifically prays and requests that this Court:

1. Issue a WRIT OF PROHIBITION prohibiting all of the Orders issued from standing.

2. Issue the appropriate Writ to compel the Secretary of the Florida Department of Transportation to retake the affected roadways and redesign and reconfigure the said roadways to provide for "safe passage."

3. Issue the appropriate Writ or Declaratory Statement to address the propriety of the actions of the Florida Supreme Court, it's Clerk, Acting Clerk and Members.

4. Issue the appropriate Writ or Declaratory Statement to address the propriety of the actions of the federal district court judge.

5. Order restitution to the Plaintiff/Petitioner to compensate same for all reasonable expenses in the above styled action.

So prays the Petitioner.

George Lawson Kelly
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